

Before the
Federal Communications Commission
Washington DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
American Communications Services, Inc.)
)
Petition for Expedited Declaratory)
Ruling Preempting Arkansas Public)
Service Commission Pursuant to Section)
252(e)(5) of the Communications Act)
of 1934, as amended)

CC Docket No. 97-100

**GTE's REPLY COMMENTS CONCERNING ACSI's PETITION
FOR DECLARATORY RULING**

GTE Service Corporation on behalf of its domestic telephone operating and wireless companies hereby comments on filings by various parties opposing the Petition for Declaratory Ruling (the "Petition") filed March 25 on behalf of American Communications Services, Inc. ("ACSI").

BACKGROUND

On the grounds of conflict with the Telecommunications Act of 1996 (the "1996 Act"), the Petition asks the FCC to preempt a statute recently adopted by the Arkansas legislature "so that all tasks assigned to the Arkansas PSC by the 1996 Act will be performed by the FCC."

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DISCUSSION

GTE URGES THE COMMISSION TO REJECT THE PETITION.

The Petition would have the FCC broadly preempt the Arkansas statute and action of the Arkansas Public Service Commission ("PSC") pursuant thereto.¹ GTE suggests the Commission should reject this request because essentially all the same issues are already before the FCC in ongoing proceedings or are before the Eighth Circuit on appeal,² so that granting the ACSI request would merely create a redundant set of proceedings before the FCC. As pointed out by the Attorney General of Arkansas, no direct conflict between federal and state law has been established, and ACSI makes no showing that it is being harmfully affected pending resolution of the outstanding Eighth Circuit appeals.

Already at issue before the Eighth Circuit is the intended grant of power to the

¹ ACSI (at 2) asks the FCC to preempt "the authority of the Arkansas PSC to arbitrate and approve interconnection agreements pursuant to Section 252(e)(5) ... or to certify CLECs [Competitive Local Exchange Carriers] as ETCs [eligible telecommunications carriers] pursuant to Section 5 of the Arkansas Act and Section 214(e)... and declare that such approvals, arbitrations and certifications pertaining to Arkansas will instead be carried out by the FCC." See the Petition at 13-16.

² See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), *modified on recon.*, 11 FCC Rcd 13042 (1996), *further petitions for reconsideration pending, petition for review pending sub nom.* Iowa Utilities Board *et al.* v. FCC, No. 96-3221 and consolidated cases (8th Cir. filed September 6, 1996), *partial stay granted*, Iowa Utilities Board *et al.* v. FCC, No. 93-3221 and consolidated cases (8th Cir. October 15, 1996), 1996 U.S. App. LEXIS 27953, *partial stay lifted in part*, Iowa Utilities Board *et al.* v. FCC, No. 96-3221 and consolidated cases (8th Cir. November 1, 1996), *application to vacate stay denied*, 117 S. Ct. 378, 379 and 429 (1996).

FCC pursuant to sections 251 and 252,³ as opposed to the power of the states, particularly in terms of the reservation of jurisdiction to the states pursuant to subsection 152(b). Already at issue before the FCC is Congress' provision under section 254 for assuring universal service, and the FCC has just released its decision.⁴ The Arkansas statute requires the Arkansas commission to comply with the 1996 Act, and contains no provision directing or requiring non-compliance. It also reflects the same concerns of the people of that state, e.g., that universal service must be duly protected in a highly competitive universe.

Another reason why the FCC should not grant the Petition is that it would be at odds with the intent of the 1996 Act, which provides for an important role for state commissions. See, for example, subsection 252(a) (state mediation), subsection 252(b), (c) and (d) (state arbitration), and subsection 252(e) and (f) (state approval or disapproval of contracts). See *also* subsection 254(f), which permits a state to adopt universal service regulations "not inconsistent with the [FCC's] rules to preserve and advance universal service" and also permits a state to "adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that state only to the extent that such regulations adopt additional specific, predictable and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." See *also* subsections 253(b), 254(f), and 214(e), which grant significant powers to the states.

³ All section references herein are to 47 U.S.C. unless otherwise specified.

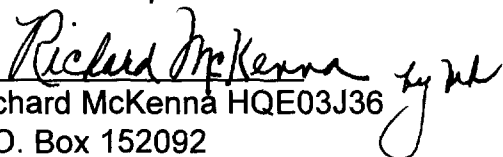
⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 97-157 (released May 8, 1997) (the "*D.96-45 Report & Order*").

Given these facts, there is no reason to jump to the conclusion that the Arkansas PSC will take action in conflict with FCC policy. The FCC should not exacerbate federal-state relations by the kind of heavy-handed preemptive action urged by ACSI, MCI and ALTS; it should instead seek cooperation between federal and state agencies. Pending action by the Arkansas PSC, the FCC should not initiate redundant FCC proceedings. Certainly, until the Arkansas PSC adopts a plan of action, no determination can be made of whether there is a conflict between federal and state plans that would justify Federal preemption.

In summary: The FCC should not jump to the conclusion of federal-state conflict. Federal and state authorities should work together to achieve a coordinated and effective result that will meet the requirements of the 1996 Act and serve the public interest. GTE respectfully urges the FCC to reject the Petition, which employs the Arkansas statute as a pretext for demanding massive and unjustified FCC preemption in violation of congressional intent.

Respectfully submitted,

GTE Service Corporation on behalf of
its domestic telephone operating and
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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Reply Comments Concerning ASCI's Petition for Declaratory Ruling" have been mailed by first class United States mail, postage prepaid, on May 20, 1997 to the parties listed below:

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